Supreme Court, U. S.
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80-727

No. . . . .

IN THE

Supreme Court of the United States

October Term, 1980

DONALD W. GREAVES and
NORMA P. GREAVES
Petitioners,

vs:

DEPARTMENT OF REVENUE,
STATE OF OREGON
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF OREGON

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STATE OF OREGON

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Petitioner applies for a Write of Certiorari and in support of its application states:

QUESTION PRESENTED

Whether Petitioners have been effectively denied their rights under the United States Constitution when the Oregon Department of Revenue is permitted to be Plaintiff in a civil court?

Whether any judicial proceeding has any validity if it permits the government to act against a citizen without recognizing and upholding the contractural guarantees clearly set out in the United States Constitution?

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CITATIONS TO OPINIONS BELOW

The opinion of the SUPREME COURT OF THE STATE OF OREGON is set out in Appendix infra, @ p. 5.

JURISDICTION

The judgment of the SUPREME COURT OF THE STATE OF OREGON was entered on July 23, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1651 (a).

STATEMENT OF THE CASE

The Oregon Department of Revenue petitioned the Oregon Tax Court to issue an Alternative Writ of Mandamus upon Petitioners to compel tax returns.

The Court issued the writ and Petitioners filed a Motion to Dismiss for Lack of Jurisdiction which was denied in Court during the show cause hearing.

The Oregon Department of Revenue was allowed to proceed and produced a prima facie case to which the Petitioner failed to contest as their substantive rights had been violated.

The Court ruled in favor of the State and issued Petitioners a Peremptory Writ of Mandamus to compel tax returns.

Petitioners appealed to the Supreme Court of the State of Oregon and further argued on fundamental issues as to jurisdiction and constitutionality.

REASONS FOR GRANTING THE WRIT

I.

THE CONSTITUTION OF THE UNITED STATES IS, AND WAS INTENDED TO BE A CONTRACT BETWEEN THE CITIZEN AND HIS GOVERNMENT

No action taken by the government of the United States can be valid if it does not carefully and faithfully follow the contract by which it came into being. The citizen granted this contract to a government entity with limited and separate powers. The contract permits the government to act against the citizen *only* in criminal matters.

All actions in this matter, were adversary, government vs. citizen, yet, they were characterized as civil and justified by that characterization.

That action is a total nullity because the government has no such power:

> "The general rule is that an unconstitutional statute though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose; since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted."

> ". . . Since an unconstitutional law is void, the general principle follows that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it. . ."

"No one is bound to obey an unconstitutional law and no courts are bound to enforce it." *16 AJ 2nd Sec 177.*

II.

AN ACT OF CONGRESS WHICH IS NOT MADE PURSUANT TO THE CONSTITUTION IS, AND SHOULD BE DECLARED, UNCONSTITUTIONAL

The Courts have the power and the duty to nullify those laws which do not support or which nullify the Constitution of the United States. *Marbury v. Madison,* 1 Cranch (5 U.S.) 137, 2 L.Ed. 60:

> ". . . It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States, generally, but those only which shall be made in pursuance of the constitution, have that rank.
>
> Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument. . . ."

III.

CONCLUSION

For the reasons set forth herein, the Petitioners respectfully prays that this Honorable Court will grant the Writ to the Supreme Court of the State of Oregon.

Respectfully submitted,

Donald W. Greaves
Attorney for Petitioners

CERTIFICATE OF SERVICE

I, do hereby, certify that I have mailed and/or delivered a true and correct copy of the attached PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON to the following parties:

Walter J. Apley
Assistant Attorney General
Tax Division
State Office Building
Salem, Oregon 97310

Supreme Court of the State of Oregon
State Court Administrator
Supreme Court Building
Salem, Oregon 97310

APPENDIX

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Banc

Department of Revenue
State of Oregon

Respondent,

v.

Donald W. Greaves and
Norma P. Greaves,

Appellants.

* * * * *

TC 1378
SC 26873

Appeal from the Oregon Tax Court.

Carlisle B. Roberts, Judge.

Argued and submitted June 24, 1980.

Donald W. Greaves, Medford, argued the cause pro se.

Walter J. Apley, Assistant Attorney General, Salem, argued the cause for respondent. With him on the brief was James M. Brown, Attorney General.

PER CURIAM.

Affirmed.

PER CURIAM.

The Department of Revenue petitioned the Oregon Tax Court for a writ of mandamus, pursuant to ORS 314.365,[1] commanding appellants to file individual income tax returns for the years 1977 and 1978. Defendants resisted issuance of the writ on various constitutional grounds.[2] The tax court rejected these contentions. Finding from the evidence that there were reasonable grounds to believe that defendants had taxable income in those years, the court issued a peremptory writ, and defendants appeal.

Appellants' main contention pressed in this court is that a writ of mandamus commanding a taxpayer to file a tax return compels him to incriminate himself contrary to the federal fifth amendment.[3]

Although the mandamus proceeding is not itself a criminal prosecution, it is true, as defendant argues, that the claim against compelled testimony may be raised in a civil proceeding if the answer demanded might subsequently be used against the witness in a criminal case. Theoretically this could apply to a disclosure compelled by a writ of mandamus as to any other compelled statement. However, appellants did not below and do not here claim that the answer to any particular question asked on the tax return would incriminate them. They do not go so far as to decline to admit to their identities as a reason not to file a return. But they maintain that the requirement of filing a return at all violates their constitutional privilege because possibly the information might later be used in a criminal case.

Whatever might be true of a refusal to answer specific questions, at this point and as stated by appellants the claim is too broad and premature. Even if a person claiming the privilege cannot be expected to explain just how his answer to a question might help to convict him in a criminal case, he does at least

have to invoke the privilege with respect to any and each particular question that he fears on that score. Appellants never proceeded that far. Perhaps they acted under a misapprehension that possible prosecution for a false answer can itself give rise to the privilege not to answer at all, but that is not so. *See United States v. Bryan* 339 US 323, 342, 94 L Ed 884, 70 S Ct 724 (1949); *Glickstein v. United States* 222 US 139, 56 L Ed 128, 32 S Ct 71 (1911). We cannot proceed to provide appellants with a guide to hypothetical questions about the privilege against self-incrimination; it must suffice to state that their constitutional objections to the tax court's order are not well taken.

Affirmed.

1

ORS 314.365:

"If a taxpayer fails to file a return within 60 days of the time prescribed by any law imposing a tax upon or measured by net income, the judge of the Oregon Tax Court, upon petition of the department, or of any 10 taxable residents of the state, shall issue a writ of mandamus requiring the person to file a return. The order of notice upon the petition shall be returnable not later than 10 days after the filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. An appeal may be taken from the judgment by the taxpayer or the department to the Supreme Court in the manner that appeals are taken in suits in equity, irrespective of the amounts involved. All writs and processes may be issued from the office of the clerk of the tax court, and, except as otherwise provided in this section, shall be returnable as the court shall order."

2

Petitioner Donald W. Greaves, appearing pro se, argued that the alternative writ should be dismissed because the state can proceed against individuals only by criminal prosecutions and not by civil proceedings. As a general proposition, this is an obvious misunderstanding. As applied to the present case, the state has not accused defendants of an offense or proposed to have them punished; it invoked the statutory procedure for commanding a future action, the filing of tax returns.

3

U.S. Const. amend. V provides: ". . . nor shall any person . . . be compelled in any criminal case to be a witness against himself, . . ." In advance of a question under the fifth amendment, Or Const art I, S 12 guarantees that "[n]o person shall . . . be compelled in any criminal prosecution to testify against himself."